

**Consolidation Coal Company and International Union, United Mine Workers of America. Cases 14-CA-15068 and 14-CA-15141**

April 27, 1983

**DECISION AND ORDER**

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On April 14, 1982, Administrative Law Judge Lawrence W. Cullen issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute "In any like or related manner" for "In any other manner" in paragraph 1(d).
2. Substitute the attached notice for that of the Administrative Law Judge.

<sup>1</sup> The Board finds it unnecessary to pass on the Administrative Law Judge's findings of 8(a)(1) violations as to Tucker and Isaacs as such findings are merely cumulative.

Member Hunter finds it unnecessary to rely on *Peddie Building*, 203 NLRB 265 (1973), cited by the Administrative Law Judge.

<sup>2</sup> The Administrative Law Judge recommended a broad "in any other manner" injunctive order. We disagree. Applying the standard for broad cease-and-desist orders established in *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979), we find that the Respondent has not demonstrated a proclivity to violate the Act in general disregard for the employees' statutory rights. Accordingly, we shall modify the recommended Order and notice as indicated below.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with permanent replacement or discharge if they refuse to cease or terminate an unfair labor practice strike against us or otherwise engage in activities protected by Section 7 of the Act.

WE WILL NOT threaten employees with arrest, trouble, legal prosecution, being put behind bars, or any similar threats or in any other manner threaten them if they engage in picketing or other concerted activity in furtherance of an unfair labor practice strike against us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

Our employees have the right to join and support International Union, United Mine Workers of America, or any other labor organization, or to refrain from doing so.

**CONSOLIDATION COAL COMPANY**

**DECISION**

**STATEMENT OF THE CASE**

LAWRENCE W. CULLEN, Administrative Law Judge: This consolidated case was heard by me on October 15, 1981, in Saint Louis, Missouri, on a consolidated complaint and notice of hearing, issued July 29, 1981, by the Regional Director for Region 14, and arises from charges filed by International Union, United Mine Workers of America (hereinafter referred to as the Union), al-

leging that Consolidation Coal Company (hereinafter referred to as Respondent or the Employer) had violated Section 8(a)(1) of the National Labor Relations Act (hereinafter referred to as the Act).<sup>1</sup> The complaint is joined by Respondent's answer filed August 6, 1981, wherein it denies the commission of violations of the Act. The complaint alleges that Respondent committed violations of Section 8(a)(1) of the Act by the issuance of telegrams on or about June 11, 1981,<sup>2</sup> threatening to discharge its employees engaged in an unfair labor practice strike. The complaint also alleges several violations of Section 8(a)(1) of the Act by Respondent by the issuance of demands and threats to employees engaged in lawful picketing in support of the Union's unfair labor practice strike of Respondent's facilities.

Upon the entire record in this case, including my observation of the demeanor of the witnesses, and after due consideration of the positions of counsel for the General Counsel and counsel for Respondent, I make the following findings of fact and analysis.

## FINDINGS OF FACT

### I. JURISDICTION

#### A. The Business of Respondent

The complaint alleges, Respondent admitted in its answer, and I find that Respondent is a corporation duly authorized to do business under the laws of the State of Illinois, and that at all times material herein, Respondent has maintained its principal office and place of business at 1800 Washington Road, Pittsburgh, Pennsylvania, that Respondent maintains nine mine facilities in Illinois, and that Respondent is, and has been at all times material herein, engaged in the mining and nonretail sale of coal. The complaint alleges, Respondent admitted in its answer, and I find that Respondent's mine facilities, Mine 2, located at R.R., Pinckneyville, Illinois; Mine 3, located at Route 2, Sparta, Illinois; Mine 4, located at Route 1, Cutler, Illinois; Mine 5, located at Route 1, DeSoto, Illinois; and its central shop located south of Pinckneyville, Illinois, are the only facilities involved in this proceeding. The complaint alleges, Respondent admitted in its answer, and I find that during the 12-month period ending June 30, 1981, which period is representative of its operations during all times material herein Respondent, in the course and conduct of its business operations, sold and shipped or caused to be shipped goods valued in excess of \$50,000 of which goods valued in excess of \$50,000 were shipped from Respondent's Pinckneyville, Sparta, Cutler, and DeSoto, Illinois, facilities directly to points located outside the State of Illinois.

The complaint alleges, Respondent admitted in its answer, and I find that at all times material herein Respondent was an employer within the meaning of Sections 2(2), (6), and (7) of the Act.

<sup>1</sup> The charge in Case 14-CA-15068 was filed on June 11, 1981. The charge in Case 14-CA-15141 was filed on July 2, 1981.

<sup>2</sup> All dates are in 1981 unless otherwise stated.

### B. The Labor Organization

The complaint alleges, Respondent admitted in its answer, and I find that the Union is now and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES<sup>3</sup>

### A. Background

This case arises from a continuing dispute concerning recognition of certain of Respondent's warehouse employees at three of its facilities (Burning Star Mines 3, 4, and 5). On November 13, 1980, an election was held. The Union was certified as the exclusive bargaining representative of Respondent's warehouse employees at Burning Star Mines 3, 4, and 5 on December 3, 1980. The complaint alleges that since December 30, 1980, Respondent has refused to recognize and bargain with the Union concerning said employees, and that the Union filed charges with the Board alleging violations by Respondent of Section 8(a)(1) and (5) by reason of its refusal to bargain. A complaint was issued and subsequently Respondent filed an answer and an amended answer and the General Counsel submitted a motion for summary judgment concerning the allegations in the complaint, which motion was granted by the Board on June 12, 1981 (Case 14-CA-14626). Respondent is in the process of appealing this ruling in the United States Court of Appeals for the Seventh Circuit.

Upon refusal of Respondent to recognize and bargain with the Union, the affected warehouse employees commenced a strike on March 27 and picketing shortly thereafter. The pickets were located at Respondent's Burning Star Mines 3, 4, and 5 and also at Respondent's Burning Star Mine 2 and Respondent's central shop facility.<sup>4</sup>

### B. The Alleged 8(a)(1) Violations

#### 1. Respondent's threats to discharge and to permanently replace its employees who were engaged in picketing

The evidence is undisputed that on June 11 Respondent caused to be sent to its striking warehouse employees telegrams similar to the following: "This shall serve as notice that it is the intention of Consolidation Coal Company to permanently replace you as a warehouse person at Burning Star No. mine unless you report for work

<sup>3</sup> The following includes a composite of the testimony of the witnesses at the hearing, which testimony is credited except as specific credibility resolutions are hereafter made. In assessing the credibility of the General Counsel's witnesses and that of Respondent's witnesses, I have considered the relative independence of the General Counsel's witnesses (all but Ogolini were not employed by Respondent and Ogolini's testimony is contrary to the position of Respondent) and also the interest of Respondent's witnesses (all are employed by Respondent in supervisory positions). I have also considered the specific statements attributed to Respondent's agents by the General Counsel's witnesses and have weighed them against the more guarded statements acknowledged by Respondent's supervisors and agents.

<sup>4</sup> The strikers carried signs which stated, "Warehouse employees on strike against unfair labor practices. Company refused to meet and bargain in good faith." (G.C. Exh. 4.)

immediately on your next scheduled shift upon receipt of this notice." The above quotation is derived from the General Counsel's Exhibit 2 which is a copy of a mailgram confirmation notice issued by Respondent's superintendent, Larry Hawkins. It was stipulated at the hearing that this mailgram was representative of the mailgram sent to Respondent's other striking warehouse employees employed by Respondent at its Burning Star Mines 3, 4, and 5.<sup>5</sup> The warehouse employees continued to strike and did not return to work on Respondent's next scheduled shift.

#### Analysis

On the basis of the foregoing undisputed evidence, I conclude that the striking employees of Respondent were unfair labor practice strikers at the time of the issuance of the telegram. See *Pillowtex Corp.*, 241 NLRB 40 (1979), enf'd. 615 F.2d 917 (5th Cir. 1980). I also conclude that the threats to permanently replace the strikers were inherently threats to discharge them and violative of Section 8(a)(1) of the Act. Upon an unconditional request for reinstatement, an employer is required to reinstate unfair labor practice strikers to their former positions. See *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956); see also *Inta-Roto, Incorporated*, 252 NLRB 764 (1980). Accordingly, I find that Respondent Consolidation Coal Company, by the issuance of the telegrams of June 11 to the striking warehouse employees, violated Section 8(a)(1) of the Act.

#### 2. The picket line incidents

##### a. The incident involving Leo S. Ogolini

Ogolini, a warehouse employee at Burning Star Mine 5, testified that he was engaged in picketing in pursuance of the strike against Respondent by reason of its refusal to bargain after the Union was certified to represent the warehouse employees at Burning Star Mine 5. On July 2 he parked his automobile near the entrance road to Burning Star Mine 2 and commenced picketing with the sign described as General Counsel's Exhibit 4. Ogolini commenced picketing at midnight on July 2 and stayed until approximately 8:30 a.m. At approximately 7:15 a.m., he was approached by Roger Gann, an assistant superintendent of Respondent's Burning Star Mine 2. Ogolini testified that Gann drove up in a truck and parked alongside Ogolini's truck, rolled down his window, introduced himself, and asked Ogolini's name, and then asked whether he was related to Guido Ogolini and Ogolini replied that Guido Ogolini was his father. Gann then asked Ogolini whether he had been advised that he should leave the picket line. Ogolini replied, "No," and Gann then told Ogolini that Gann was officially notifying Ogolini to leave. Ogolini replied, "Okay." Ogolini testified that Gann then stated that he would "like to prosecute me to the fullest extent of the law," to which Ogolini replied, "Okay." Ogolini testified that Gann then stated that "[H]e would love to see my ass in jail," and I said,

<sup>5</sup> It was stipulated by Respondent that the telegrams were sent by Respondent's supervisors and agents of Respondent within the meaning of Sec. 2(11) of the Act.

"Fine." The conversation was then terminated and Gann drove on, stopped his truck, looked back at Ogolini's truck, and then proceeded to the mine.

Gann testified and acknowledged the incident related by Ogolini. He testified, however, that he asked Ogolini what Ogolini was doing at the mine, and Ogolini informed Gann that he was picketing, and that he then asked the reason for the picketing and that Ogolini told him it concerned the warehouse employees at Burning Star Mines 3, 4, and 5 and their representation by the Union. Gann testified he then informed Ogolini that the warehouse employees at Burning Star Mine 2 had voted against union representation and opposed the picketing. Gann testified he asked Ogolini to leave the premises, that Ogolini refused, whereupon he again asked him to leave and Ogolini again refused. Gann testified that at that point he told Ogolini that he did not know whether he had a right to be picketing at Burning Star Mine 2 since they were not involved in the recognition process and that Gann was going to call "[O]ur lawyers and see if there were anything that I could do legally to stop his picketing." Gann acknowledged that he told Ogolini that "I would do everything that I could legally, you know, take the strictest measures that we could if there were any avenues open to us." Gann denied having made the comment to Ogolini that he would love to see his "ass in jail" but did testify that he stated that "[Y]ou know, it would tickle me to death to see you behind bars, you know."

#### Analysis

I credit Ogolini's version of the July 2 incident. However, even if Gann's version of this conversation were to be credited, I find that Respondent violated Section 8(a)(1) of the Act by reason of the statements made by Gann to Ogolini. Respondent contends that employees were required to limit their picketing to those facilities of Respondent which were the focus of the dispute and to refrain from picketing Respondent's facilities which were not involved in the dispute, so as to be afforded the protection of the Act. Ogolini was engaged in concerted activity, in furtherance of an unfair labor practice strike as an employee of Burning Star Mine 5. Ogolini was not required to limit his picketing to Burning Star Mine 5 where he was employed.<sup>6</sup> See *Peddle Buildings*, 203 NLRB 265 (1973). Accordingly, I find that Gann's demands that Ogolini cease picketing and his threats to Ogolini were unlawful and that Respondent thereby violated Section 8(a)(1) of the Act. See *Giant Food Markets*, 241 NLRB 727 (1979), enforcement denied 633 F.2d 18 (6th Cir. 1980), re: Gann's demand that Ogolini cease picketing; see *Peddle Buildings*, *supra*, re: Gann's threats to Ogolini.

<sup>6</sup> It was stipulated by the parties that Ogolini was picketing on a public road and where he had a right to be, and was not trespassing on Respondent's property. It was also stipulated that Gann was a supervisor within the meaning of Sec. 2(11) of the Act.

b. *The incident involving Joe Boner*

Boner, who was not an employee of Respondent, testified that on June 26 or 27 he was contacted by union representative Monty Wilson and asked to relieve employees engaged in picketing on the picket lines at Respondent's facilities. Boner was assigned to picket on two occasions (June 28 and July 1). On July 1, he was parked on a public road across from Respondent's Burning Star Mine 4. A picket sign was placed on his windshield. Boner testified that an automobile, he had seen previously go to the mines, swerved and made a U-turn and pulled within 3 feet of his pickup truck bumper and that two men alighted from the automobile. The driver subsequently identified as B. V. Hyler (administrative assistant to the vice president of operations of Illinois surface mines) identified himself as a representative for Respondent and asked Boner's name and what he was doing and Boner pointed to the picket sign on the windshield. Hyler then told him, "But you're not a warehouseman" and asked whether he belonged to the Union and Boner informed him that he did. Hyler told Boner, "You have no right to be here." Boner replied that he did, whereupon Hyler once again asked his name and Boner again refused to tell him his name. Hyler identified himself as a "superintendent" but did not disclose his own name. Hyler told Boner, "You know you can get in serious trouble for being out here" and asked Boner, "Who's going to pay your fine for being out here." Hyler also asked Boner, "Who ordered you out here" and Boner replied that he had been sent to the site by Monty Wilson and gave him Wilson's phone number. Hyler again told Boner that he would have to leave and Boner again refused. Hyler then told Boner that he was on Respondent's property and Boner replied he was on a public road. At that point, Hyler turned to the other man, subsequently identified as Richard Delloma, and indicated that he agreed but that Boner was obstructing traffic, which Boner denied. Hyler then told Boner he was "sick and tired of you guys disrupting our work around here" and said, "You will leave." Boner again refused. At one point Hyler told Boner, "Well, we're gonna go get the sheriff."

Hyler testified that on July 1 he had occasion to arrive at Burning Star Mine 4 and observed the picket sign carried by Boner, that he drove his automobile up and he and Delloma approached Boner who was sitting in a pickup truck and asked Boner his name and that Boner replied it was not his business. Hyler identified himself as a management employee of Respondent and asked Boner his purpose for picketing, and Boner replied that he was helping the employees. Hyler asked Boner why he was doing so, and asked him whether he was getting paid for doing so, and again asked Boner who he was working for and Boner replied that he was working for Monty Wilson and offered Hyler his phone number. Hyler testified that at that point he asked Boner to leave the location, that Boner refused, and that Hyler then asked him several times to leave the location and that Boner replied that he was not going to leave until his relief came or the sheriff or Wilson required him to leave. Hyler denied asking Boner who would pay his fine or having told him that he was in serious trouble for being there, but did

admit telling Boner that "If he did not leave he might be in legal difficulty." Hyler testified that he did not explain what he meant by the phrase "legal difficulty." Delloma testified that he "heard some" of the conversation between Hyler and Boner, that Hyler asked Boner to leave, that he did not hear Hyler ask Boner who would pay his fine, and that Boner brought up the subject of the sheriff.

Analysis

I credit Boner's version of the incident over Hyler's and Delloma's version. However, even if I were to credit Hyler's and Delloma's version, I find that Respondent violated Section 8(a)(1) of the Act. Clearly, the reference to "legal difficulty" as testified to by Hyler or to "trouble" and "fines" and the "sheriff" as testified to by Boner were references to prosecutorial steps Respondent would take if Boner continued to picket. Moreover, Hyler's request that Boner leave the premises was violative of Section 8(a)(1) of the Act.<sup>7</sup> Boner was engaged in concerted activity in furtherance of the employees' protest of unfair labor practices committed by Respondent. Respondent contends that certain of the individuals who engaged in picketing of its facilities were not "employees" within the meaning of the Act so as to be afforded the protection of the Act. I find that Boner was an employee within the meaning of Section 2(3) of the Act, which includes the working class in general and is not limited to employees of a particular employer. See *Giant Food Markets, supra*, and *Eastex v. NLRB*, 426 U.S. 556 (1978), and *Musicians Local 46, AFM (American Broadcasting)*, 255 NLRB 386 (1981). As noted *supra*, it was stipulated by Respondent that the picketing occurred on public property and there was no evidence of any blockage of ingress or egress of Respondent's premises. Under these circumstances, I find that Respondent violated Section 8(a)(1) of the Act by Hyler's demand that Boner cease picketing and by the issuance of threats to Boner that he would get into trouble and might be required to pay a fine and his threat to get the sheriff. Even assuming that Hyler's version is accurate (his threat of "legal difficulty"), I find that Respondent violated Section 8(a)(1) of the Act. See *Giant Food Markets, supra*, re: Hyler's demand that Boner cease picketing; see *Peddle Buildings, supra*, re: Hyler's threats to Boner; see also *Pepper Packing Co.*, 243 NLRB 215 (1979), re: unspecified threats.

c. *The incident involving Carl Tucker*

Tucker, a retired employee, testified that he was asked by his grandson, John Tucker, who is employed as a warehouse worker by Respondent, to picket for him on Thursday, July 2, at the central shop. Tucker parked his automobile and placed a picket sign thereon. Tucker testified that, shortly before lunch on July 2, he was approached by a man (subsequently identified as Hyler) who identified himself as a company official and told him his name and asked Tucker what he was doing

<sup>7</sup> It was stipulated that Hyler and Delloma were supervisors within the meaning of Sec. 2(11) of the Act. Delloma was employed as an assistant superintendent at Respondent's Burning Star Mine 4.

there, to which Tucker referred to the picket sign on his automobile. According to Tucker, the man asked, "Don't you know that's against the law?" to which Tucker replied, "No." Hyler then asked Tucker to leave, and Tucker refused. Hyler then stated, "You're gonna get in deep trouble, and the longer you stay here, the more trouble you're gonna get into." Tucker also testified that Hyler asked, "Are they gonna pay your fine or sit in jail for you over this?" and Tucker replied, "I have no idea." Tucker testified that Hyler then stated, "I'm going to leave and when I come back, you'd better not be here." Then he left. Tucker testified that approximately an hour later Hyler returned with another man (who was not identified at the hearing) and handed Tucker a summons. Tucker showed it to an employee that he knew from the mines and asked the employee whether he thought that Tucker should leave. The employee replied in the affirmative and Tucker then left and went to Pinckneyville, Illinois, as directed by the summons. The "Notice To Appear" is directed to Carl Tucker, Murphysboro, Illinois, and directs him to appear before a circuit judge in the circuit court for the Twentieth Judicial Circuit of Illinois, Perry County in the matter of *Consolidation Coal Company v. Lewis Issac, et al.*, Case No. 81-CH-6.

Hyler testified and acknowledged the incident and testified that he approached Tucker and asked his name and that Tucker stated his name was Carl Tucker. He then asked whether he was John Tucker's father and Tucker stated that he was John Tucker's grandfather. He then asked Tucker his reason for being there. Tucker stated he was there to help the warehouse employees and informed him that John Tucker had asked him to help. Hyler testified that he asked Tucker to "leave the area and not return" and that Tucker refused to do so. Hyler testified that he again asked Tucker to leave and Tucker stated that he would not leave unless someone else asked him to leave and stated something to the effect that Hyler should call the sheriff if he wanted Tucker to leave. Hyler testified that he did not respond to this suggestion, but again asked Tucker to leave and Tucker refused. Hyler testified, "I indicated to him at that time that if he did not, he might be—find himself in legal difficulty." And that Tucker again refused to leave and at that point Hyler got into his automobile and left. Hyler denied telling Tucker that he would be in "deep trouble" if he did not leave or in "bad trouble" if he did not leave. He also denied asking Tucker who would pay his fine for him if he did not leave or having mentioned the word "fine." He also denied asking Tucker who would sit in jail for him if he did not leave or having mentioned the word "jail." He also denied telling Tucker that he had better not be there when Hyler got back. Hyler did not testify concerning his subsequent return that afternoon, and the issuance of the "Notice to Appear" to Tucker.

#### Analysis

I credit Tucker's version of the incident. However, even if Hyler's version were to be credited, I find that Respondent violated Section 8(a)(1) of the Act by reason of the statements made by Hyler to Tucker. I find that Tucker was engaged in concerted activity in furtherance

of an unfair labor practice strike when he picketed at Respondent's central shop. It was stipulated by the parties and acknowledged by Hyler that Tucker was picketing on a public road and was not blocking ingress or egress to Respondent's facility. Additionally, as noted *supra*, it was stipulated that Hyler was a supervisor within the meaning of Section 2(11) of the Act. I find that Tucker was an employee within the meaning of Section 2(3) of the Act, which includes the working class in general and not merely employees of a particular employer. See *Giant Food Markets* and *Eastex v. NLRB* and *Musicians Local 47*, all cited *supra*. Under these circumstances, I find that Respondent violated Section 8(a)(1) of the Act by reason of Hyler's demand that Tucker leave and by reason of the issuance of threats to Tucker that he would get in trouble, might be required to pay a fine, and his inquiry as to who would pay his fine or sit in jail for him, and his statement to Tucker that his picketing was against the law. Even assuming that Hyler's version is accurate, his alleged threat of "legal difficulty" would constitute a violation of Section 8(a)(1) of the Act. See *Giant Food Markets, supra*, re: Hyler's demand that Tucker cease picketing; see also *Pepper Packing Co., supra*, re: unspecified threats.

#### d. The incident involving Lewis Isaacs

Lewis Isaacs, a retired employee, testified that he picketed on behalf of the Union on June 28 and July 2 at the request of Tony Kujawa, a subdistrict board member for the Union. Isaacs testified that he picketed on July 2 at Respondent's Burning Star Mine 4. He utilized a picket sign similar to General Counsel's Exhibit 4. Isaacs testified that he was approached by two gentlemen subsequently identified as Delloma and Tommy Thompson (Respondent's employer industrial relations manager). Isaacs testified that Delloma got out of his truck and told him, "You're in trouble" and that he would file papers against Isaacs, and that Isaacs was in "bad trouble." Isaacs denied that he was in trouble and Delloma then asked him, "Well, why don't you leave?" and Isaacs stated that he had not said a word to anyone. Delloma then stated that "Isaacs would cause him to lose his job" and Isaacs told him he was sorry and that Delloma should leave but that Isaacs could not leave. Delloma then said, "Well then you're too loyal to your union" and Isaacs acknowledged that he was loyal to his Union. Isaacs testified that he then told Delloma to call the sheriff and have him arrested if he so desired, but Isaacs did not feel he was doing anything improper. Isaacs testified that at one point Delloma stated that either he would or had already filed "papers" against Isaacs and that they would be delivered to Isaacs. Isaacs testified that he received a "Notice to Appear" similar to Respondent's Exhibit 1 on the next day, and that he took it to the subdistrict office of the Union.

Delloma acknowledged the incident as testified to by Isaacs and testified that he was with Thompson in his truck and he pulled his truck alongside the road and walked over to talk with Isaacs and asked Isaacs what he was doing there, and then asked Isaacs to leave, and that Isaacs refused to do so. Delloma testified that, "I said

you're liable to get in trouble unless you leave," and that Isaacs indicated that he was not going to leave. Delloma testified he told Isaacs that a lot of people were out of work as a result of Isaacs being there. Delloma testified that "I said, well, I can see that I'm not going to persuade you to leave, so I got in the truck and left." Delloma acknowledged on cross-examination that he may have told Isaacs that he seemed like a nice guy and that he would hate to see him get in trouble but it looked as if he could not persuade him to leave. Delloma acknowledged that Isaacs was picketing on a public road and that he was not blocking ingress to or egress from the mine. He acknowledged that Isaacs had a picket sign on a chair in front of his automobile and that the language of General Counsel's Exhibit 4 was the language that was on the picket sign which he observed. Thompson testified and generally corroborated the testimony of Delloma, and also testified that "in a jokingly fashion Mr. Delloma told Mr. Isaacs that the mailman was bringing his papers." He testified further that the papers referred to were those "that would be issued to Mr. Isaacs asking him to leave the property." Thompson acknowledged that Delloma had asked Isaacs "To leave the property because he could get into serious trouble."

#### Analysis

I credit Isaacs' version of the testimony, which is not substantially rebutted by either Delloma or Thompson. Under either version, however, I find that Respondent, through its admitted supervisor and agent, Delloma, violated Section 8(a)(1) of the Act by asking Isaacs to leave the premises and cease picketing and by threatening Isaacs with either filing papers against him or telling him he was in trouble. I find that Isaacs was an employee under Section 2(3) of the Act engaged in concerted activity. See *Giant Food Markets, Eastex v. NLRB*, and *Musicians Local 47*, all cited *supra*. As noted *supra*, the parties stipulated that Isaacs was picketing on a public road where he had a right to be, and that he was not trespassing on Respondent's property and was not blocking ingress to or egress from the mine. I find that Delloma's attempts to interfere with this activity by asking him to leave and issuing threats that he was or would be in trouble and that "papers" would be filed against him were violative of Section 8(a)(1) of the Act. See *Giant Food Markets, supra*, re: Delloma's demands that Isaacs cease picketing; see *Peddie Buildings*, re: Delloma's threats to Isaacs; see also *Pepper Packing Co., supra*, re: unspecified threats.

#### c. The incident involving Wesley Franklin

Franklin, who was not employed by Respondent, testified that he was engaged in picketing. It was developed that this picketing occurred at Respondent's Burning Star Mine 2. Franklin had been requested by union representative Monty Wilson to assist in the picketing. Franklin testified that he had a picket sign on his windshield which was similar to General Counsel's Exhibit 4. He was approached by a man (subsequently identified as Gann), while he was sitting in his automobile talking to an unidentified individual on a motorcycle. At that time

Gann asked Franklin his name and then told Franklin he was "[g]oing to have the cops come out and arrest me and that he had no feelings for anybody who would picket against the mine, that I was making them lose money and that if he got me behind bars, that they were going to prosecute to the maximum and he was going to do his best to have me removed by the police." Franklin refused to leave. Subsequently, later in that day Gann returned with two other individuals. At that time union representative Monty Wilson had appeared on the scene. Neither Gann nor any of the other individuals identified themselves. At that time they asked Wilson who he was and Wilson refused to tell them. Specifically, one of the individuals identified by Franklin as "the white haired guy" asked who Wilson was and Wilson told him that it was none of his business, and asked why Gann "was harassing the picketers." Respondent did not call either of the other two individuals as witnesses. At that point no one would identify himself and the person identified by Franklin as "the white haired guy" handed Franklin a slip of paper informing him that it was necessary for him to go to court. Franklin was told that "I had to be in court or I was going to be in trouble from this piece of paper." At the time of this incident Franklin was not employed.

Gann acknowledged the incidents between himself and Franklin and placed the date as July 3. He testified that at the time of the first incident he and Franklin were present in addition to an employee named Bob Cook who was on a motorcycle. Gann testified that he stopped and asked Franklin whether he was picketing, that Franklin informed him that he was, and Gann introduced himself and asked Franklin his name and Franklin told him his name. He then asked why Franklin was picketing and that Franklin had told him he was not an employee of Respondent and was being paid to picket by union representative Monty Wilson. Gann testified that he informed Franklin that the warehouse employees had voted not to be represented by a union and disagreed with picketing and that the picketing was preventing Respondent's union-represented employees from working and that, "I told him I was going to contact our lawyers and file any charges that I could and that's about it." Gann denied telling Franklin that he was going to have the cops come out and arrest him or that he used the word "cops" or used the word "police" or "sheriff" or threatened Franklin with arrest or that he had otherwise threatened him with prosecution or getting him behind bars. Gann acknowledged on cross-examination that he did not explain to Franklin what type of charges he had in mind. Gann did not testify concerning the latter incident in the afternoon of the same date involving Franklin as testified to by Franklin.

#### Analysis

I credit Franklin's version of the incident. However, even if Gann's version were to be credited, I find that Respondent violated Section 8(a)(1) of the Act by reason of the statements made by Gann to Franklin. I find that Franklin was engaged in concerted activity in furtherance of an unfair labor practice strike. I find that Frank-

lin was an employee within the general definition of Section 2(3) of the Act. See *Giant Food Markets, Eastex v. NLRB*, and *Musicians Local 47*, all cited *supra*. I find as testified to by Franklin and as stipulated to by Respondent, that Franklin was on a public road, a place where he had a right to be, and was not blocking ingress to or egress from Respondent's facility. I find that Gann's request to Franklin that he leave constituted interference with Franklin's right under Section 7 of the Act. Gann's threats of jail and arrest as testified to by Franklin constituted unlawful threats and violations of Section 8(a)(1) of the Act. Moreover, even if Gann's version were to be believed, I find that the general wording of the "charges" without further explanation clearly conveyed the message that prosecutorial and possible criminal sanctions could be imposed on Franklin if he continued picketing and that such statements constituted unlawful threats and violations of Section 8(a)(1) of the Act. Accordingly, I find that by the statements and threats made by Gann to Franklin, Respondent violated Section 8(a)(1) of the Act. See *Giant Food Markets, supra*, re: Gann's demands that Franklin cease picketing; see *Peddie Buildings*, re: Gann's threats to Franklin.

### III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices as found in section II, above, in connection with the business of Respondent as set forth in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and lead to disputes obstructing the free flow of commerce.

### CONCLUSIONS OF LAW

1. The Respondent, Consolidation Coal Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. The warehouse employees of Respondent Consolidation Coal Company at its Burning Star Mines 3, 4, and 5 represented by International Union, United Mine Workers of America, were engaged in an unfair labor practice strike by reason of Respondent Consolidation Coal Company's refusal to recognize and bargain with International Union, United Mine Workers of America as their lawfully certified collective-bargaining representative. Leo Ogolini, Joe Boner, Carl Tucker, Lewis Isaacs, and Wesley Franklin were employees within the meaning of Section 2(3) of the Act and were engaged in lawful concerted activities protected under Section 7 of the Act (picketing) in furtherance of the employees' unfair labor practice strike against Respondent Consolidation Coal Company.

4. By the issuance of demands to cease picketing and threats by its supervisors and agents within the meaning of Section 2(11) of the Act to Ogolini, Boner, Tucker, Isaacs, and Franklin to stop their picketing of Respondent's facilities, Respondent Consolidation Coal Company violated Section 8(a)(1) of the Act.

5. By the issuance of the telegrams by the agents of Respondent Consolidation Coal Company to its employees represented by the International Union, United Mine Workers of America, that they either report for the next shift or they would be permanently replaced, Respondent Consolidation Coal Company violated Section 8(a)(1) of the Act.

6. The above unfair labor practices have an effect upon commerce within the meaning of Section 2(6) and (7) of the Act.

### THE REMEDY

Having found that Respondent has committed violations of Section 8(a)(1) of the Act, it shall be ordered to cease and desist therefrom and from any other unlawful activity and to take certain affirmative action designed to effectuate the policies of the Act, including the posting of the appropriate notice.

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case and pursuant to Section 10(c) of the Act, I issue the following recommended:

### ORDER<sup>a</sup>

The Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Demanding that its employees refrain from picketing in pursuance of an unfair labor practice strike against said Respondent and threatening said employees with arrest, trouble, filing of legal papers, prosecution, placing them behind bars, or otherwise threatening said employees if they continue to engage in concerted activities under Section 7 of the Act.

(b) Threatening its employees with permanent replacement if they continue to engage in an unfair labor practice strike.

(c) Discouraging membership in the International Union, United Mine Workers of America, by the above acts.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purposes of the Act:

(a) Post copies of the attached notice marked "Appendix"<sup>b</sup> immediately upon receipt thereof, in conspicuous places, including all places at its facilities in Burning Star Mines 2, 3, 4, and 5 and its central shop facility in Illinois, including all places where notices to employees are

<sup>a</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>b</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.